



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

Promoting the Wise Use of Land – Helping to Build Great Communities

Date: March 26, 2015

To: Planning Commission

From: Megan Martin, Project Manager

Subject: Item 7 – Villa San Juliette Holdings, LLC / Conditional Use Permit / DRC2013-00097

On March 9, 2015, staff received comments and recommendations from the Department of Conservation regarding Item 7, a request by Villa San Juliette Holdings, LLC for a Conditional Use Permit to allow the phased expansion of a previously approved winery and tasting room.

The Mitigated Negative Declaration determined that the proposed project is compatible with the Williamson Act. The Department of Conservation is not in full agreement with that determination.

Public Resources Code Section 21091(f); Guidelines sec. 15074 requires a Lead Agency to consider any comments received on a Negative Declaration, before approving the project.

After considering the Department of Conservation's comments and recommendations, staff finds that the proposed uses with appropriate design, conditions of approval and proper management will allow the property to remain consistent with the intent of the Williamson Act by supporting and enhancing the vineyard and winery operation (i.e. rental agreements between user and Villa San Juliette to limit volume of outdoor amplified music, lighting plan to limit impact of light pollution on surrounding area during special events, events held in the proposed barrel room shall take place completely within the structure and doors facing easterly property boundary shall remain closed during events, and on days of special events, the applicant shall implement PM10 measures for unpaved roads, driveways and parking areas to reduce fugitive dust from traffic.)

Attached, please find the March 9, 2015 Department of Conservation comment letter and Planning Department Staff's response letter sent March 24, 2015.

In addition, a modification to Condition 20 shall be included. Condition 20 reads:

20. (VS-1) At the time of application for construction permit(s), the applicant shall provide an exterior lighting plan. The plan shall include the height, location, and intensity of all exterior lighting. All lighting fixtures shall be shielded so that neither the lamp nor the related reflector interior surface is visible from Adelaida Road. All lighting poles, fixtures, and hoods shall be dark colored. This plan shall be implemented prior to final inspection or occupancy, whichever occurs first.

The site is located on Cross Canyon Road, not Adelaida Road. This condition of approval was not included as a mitigation measure; therefore, (VS-1) shall also be removed. Staff shall modify Condition 20 to read:

20. ~~(VS-4)~~ **At the time of application for construction permit(s)**, the applicant shall provide an exterior lighting plan. The plan shall include the height, location, and intensity of all exterior lighting. All lighting fixtures shall be shielded so that neither the lamp nor the related reflector interior surface is visible from ~~Adelaide Road~~ Cross Canyon Road. All lighting poles, fixtures, and hoods shall be dark colored. This plan shall be implemented prior to final inspection or occupancy, whichever occurs first.

If you have any questions concerning these requirements, please contact Megan Martin, Project Manager at (805) 781-4163.

Attachments:

1 – March 9, 2015 Department of Conservation Letter

2 – March 24, 2015 Department of Planning and Building Response to Comments

**DEPARTMENT OF CONSERVATION****DIVISION OF LAND RESOURCE PROTECTION**

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March 9, 2015

Via Email: mamartin@co.slo.ca.us

Megan Martin

County San Luis Obispo

Department of Planning and Building

976 Osos Street, Rm. 200

San Luis Obispo, CA 93408-2040

SUBJECT: VILLA SAN JULIETTE - PHASED EXPANSION OF EXISTING WINERY AND TASTING ROOM; USE PERMIT DRC2013-00097; MITIGATED NEGATIVE DECLARATION - SCH# 2015021027

Dear Ms. Martin:

The Department of Conservation's (Department) Division of Land Resource Protection (Division) monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. The Division has reviewed the above referenced project and offers the following comments and recommendations.

PROJECT DESCRIPTION

The project proposes a phased expansion of a previously approved winery and tasting room. When completed the winery would total 23,000 square feet and wine production is estimated to be 80,000 cases per year. The 169 acre property is located near the northwest intersection of Ranchita Canyon and Cross Canyon Roads. The property is classified a mixture of Unique, Prime, Farmland of Statewide Importance, and Other Land per the 2012 Important Farmland Map¹ for San Luis Obispo County. It is currently enrolled in a Williamson Act contract.

The existing and proposed facilities would reside on approximately one acre of the property. The proposal includes conversion of the lower level of the main residence to a bed and breakfast inn with 6 bedrooms. The applicant is also requesting modifications to the ordinance standards to allow the following: outdoor amplified music to play beyond 5:00 PM during special events, an increase of the allowable square footage of a proposed restaurant from 800 square feet to 1,200 square feet, 20 special events with up to 200 guests, and 3 special events with up to 500 guests.

¹ California Important Farmland Finder. California Department of Conservation.
<http://maps.conservation.ca.gov/ciff/ciff.html>. Accessed 3/6/2015.

DEPARTMENT COMMENTS

The Mitigated Negative Declaration determined that the proposed project is compatible with the Williamson Act. The Department is not in agreement with that determination. The Mitigated Negative Declaration seems to only have considered the Principles of Compatibility² when determining consistency with the Williamson Act. But that is not the only relevant statute to consider when dealing with land under contract.

Government Code (GC) §51242 enables local governments to enter into Williamson Act contracts on land that is devoted to agricultural use and located in an area designated as an agricultural preserve. In return, restricted parcels are assessed for property tax purposes at a rate consistent with their actual agricultural and/or open space use, as opposed to potential market value. Because the Williamson Act provides a preferential tax assessment on contracted land in exchange for limiting the land to agricultural uses, any use other than the agricultural or open space use for which the property was placed under contract must be found to be compatible.

With regard to the proposed events and restaurant on contracted land, the Division supports activities of an agribusiness venture on land under a Williamson Act contract as long as the facilities and activities support and promote the agricultural commodity being grown on the premises. However, it must be shown that these uses and facilities would be inherently related to the site's existing agricultural operation; and the number of attendees does not abuse the Williamson Act's leniency in allowing counties to determine the permanent or temporary human population of the agricultural area (GC §51220.5)³.

The statute on temporary population increases was written to protect agricultural lands from uses that can hinder or impair agricultural operations and as such should not be taken lightly. Activities that claim to promote products grown on site should be validated with evidence that their attributes are unique enough to justify the tax benefits meant for agricultural production, as opposed to a use that could occur on non-contracted or urban lands. The events and restaurant, as described in the proposed amendment, will increase the temporary population of the site multiple times throughout the year, which can hinder agricultural operations on- and off-site.

While the Department has typically found tasting rooms to be similar in nature to stands selling produce grown on-site, and therefore compatible; the events and restaurant as proposed, are not consistent. These events bring large numbers of people into an agricultural area multiple times per year, thus increasing the temporary population of that area. The project proposes 20 events per year with up to 200 people per event, in addition to 3 special events with up to 500 people. Together with the proposed bed and breakfast inn and restaurant, this equates to a population increase well over 6,000 people per year.

The events and restaurant additions to the winery facility in this manner become akin to an event center, which is more appropriate for noncontracted land or urban land. Because the Williamson Act provides tax benefits in exchange for devoting land to agriculture or open space, the types and scale of the proposed events, and their associated facilities, are not consistent with the Act's intent. As such, the Department cannot agree with the County's determination of insignificant impact, and that the proposed uses on contracted land would be anything less than a potentially significant impact under CEQA.

² Government Code § 51238.1 – Principles of Compatibility

³ Government Code §51220.5 – Legislative Findings: Compatible Uses (Temporary Population Increases)

The state courts have recognized that the purpose of the Williamson Act is to protect agriculture and open space by extending tax benefits to those who voluntarily subject their land to "enforceable restriction," making the land eligible for taxation based on the agricultural use value rather than market value. Lax compatibility findings would defeat the intent of the Legislature to reduce the taxes on agricultural land in return for long term binding commitments on the land restricting the use to open space and agriculture.

It may also be worth noting that events such as these, that bring large numbers of people into a rural area, often times result in neighborhood complaints. Pursuant to GC §51251, not only does the county or city have the authority to enforce any contract but statute also provides for the enforcement of contracts by landowners. *"An owner of land may bring any action in court to enforce a contract on land whose exterior boundary is within one mile of his land. An owner of land under contract may bring any action in court to enforce a contract on land located within the same county or city."*

DEPARTMENT RECOMMENDATIONS AND CONCLUSIONS

The Department strongly recommends to the County that if the owners of the property under contract wish to have these events and uses, they file for nonrenewal for the portion of the property where the events and restaurant would be located. It is preferred the landowner wait for the contract to expire via nonrenewal prior to the County considering such a use. However, the landowner may choose to submit a petition for partial cancellation in order to terminate that portion of the contract prior to its expiration via nonrenewal.

Cancellation of a contract is an option under limited circumstances and conditions as set forth in Government Code §51280 et seq. Cancellation, if approved, would eliminate any conflicts with the Williamson Act. The Division has prepared a Cancellation Advice Paper for guidance regarding the cancellation process and is available to answer any questions. It can be found online at:

http://www.conservation.ca.gov/dlrp/lca/basic_contract_provisions/Documents/Cancellation%20Advice%20Paper%20Final_Amended_7.21.2014.pdf

Thank you for the opportunity to provide comments. We request copies of any notices, staff reports, and resolutions decided by the Planning Commission and Board of Supervisors pertaining to this project. If you have any questions concerning our comments, please contact Meri Meraz, Associate Environmental Planner at (916) 445-9411 or at mmeraz@conservation.ca.gov.

Sincerely,



Molly A Penberth, Manager
Division of Land Resource Protection
Conservation Support Unit

cc: San Luis Obispo County Farm Bureau



SAN LUIS OBISPO COUNTY

DEPARTMENT OF PLANNING AND BUILDING

Promoting the wise use of land - Helping to build great communities

March 24, 2015

Department of Conservation
Meri Meraz
601 K Street
Sacramento, CA 95814

Subject: Villa San Juliette – Phased Expansion of Existing Winery and Tasting Room;
Conditional Use Permit DRC2013-00097; Mitigated Negative Declaration – SCH# 2015021027

Dear Ms. Meraz:

Thank you for your comments and recommendations regarding the above reference project. Public Resources Code Section 21091(f); Guidelines sec. 15074 requires a Lead Agency to consider any comments received on a Negative Declaration, before approving the project. The proposed project is scheduled to be heard at a regular meeting of the Planning Commission on March 26, 2015.

Project Background

The primary use of this property is for the cultivation of wine grapes and processing of grapes grown both on and off-site. The 130 acre vineyard yields approximately 25,000 cases of wine annually. The proposed project would allow increased case production and provide Villa San Juliette the potential to ferment, bottle, blend, and market additional grapes grown on-site, as well as support local growers by processing grapes grown off-site that might otherwise be taken out of the County for processing.

The property currently has an existing commercial kitchen within an existing building that includes a tasting room with a seating area for its wine tasting patrons. The commercial kitchen currently serves a seasonal menu of small appetizers that are specifically paired to the wine served. It is anticipated that the restaurant patrons will visit the tasting room during regular business hours and the two will be complimentary to one another.

The restaurant expansion will not significantly displace or impair agricultural operations on the site or in the area because it will utilize the existing winery facilities, including previously permitted commercial kitchen and seating areas within the tasting room building. No new grading or construction is proposed with the addition of this new use. The proposed use enhances the visitor experience by connecting the visitor to agriculture, through the expanded food and wine consumption options promoting their sale.

Land Use Ordinance & Rules of Procedure to Implement the Land Conservation Act of 1965

San Luis Obispo County's Land Use Ordinance (Title 22) has long allowed wineries and related land uses as "Agricultural Processing Uses" on agriculturally zoned land. Wineries may include special Events subject to a discretionary review process (Minor or Conditional Use Permit). Title 22 also allows small restaurants (Limited Food Service Facilities) on agriculturally zoned land. The Wine Industry has consistently maintained that wine tasting, wine maker dinners, and related events are essential to the agricultural marketing needs and success of the industry.

Although most of these projects have been located on land that is not under Land Conservation Contract, some of these land uses associated with wineries have also been allowed on contracted land where individual site characteristics are favorable, subject to stringent case by case review.

The *San Luis Obispo County Rules of Procedure to Implement the Land Conservation Act of 1965, Table 2 Agricultural and Compatible Uses for Lands Subject to Land Conservation Contracts and Farmland Security Zone Contracts* has long allowed wineries and winery-related land uses such as special events as "Agricultural Processing Uses". "Eating & Drinking Places" (referred to in the Land Use Ordinance as a "limited food service facilities") are "...subject to prior review and recommendations by the Agricultural Preserve Review Committee".

These agricultural accessory uses are referred to and evaluated by both the Agriculture Department and Williamson Act Program staff before being brought to the Agricultural Preserve Review Committee for their recommendation prior to proceeding to the Planning Commission or other Review Authority for approval of a Land Use Permit. Each project proposed on contracted land is carefully evaluated for compatibility and consistency with the Williamson Act.

Consistency with Principles of Compatibility in the Williamson Act [Section 51238.1.(a)].

The Williamson Act requires property under land conservation contract to maintain commercial agriculture as the primary use of the property. Other land uses, and especially structures, must be clearly incidental to or in direct support of the agricultural operations on the property. The three principles of compatibility reviewed below include the consideration of temporary increase in population (*Government Code Section 51220.5*). In this case it was determined that the principles of compatibility can be adhered to.

- 1) The long-term agricultural productivity of on-site and off-site contracted parcels will not be significantly compromised by the Special Events and Restaurant Uses.

Staff Comments: The project, as proposed, will not remove any cultivated areas from commercial agricultural use on or off-site since both the restaurant and events will be located within existing buildings and areas of the site used for essential winery operations, thus there will be no reduction in agricultural productivity. Further, adjacent agricultural activity will not be impacted by the project because the roads serving the site are adequate to serve the temporary increase in population and the uses will otherwise be contained on the project site.

- 2) Agricultural operations of (on-site and off-site) contracted parcels will not be displaced by the Special Events and Restaurant Uses.

Staff Comments: Because the restaurant will be located in an existing building and events will be located within existing buildings and areas of the site used for winery operations, agricultural operations on contracted land will not be reduced on-site or off-site by the uses proposed and the temporary increase in population. Aside from transportation to and from the site, temporary population increase will be contained on the project site in designated areas.

3) Significant removal of contracted acreage as well as non-contracted land from agricultural, open space use or agricultural production will not result from the Special Events and Restaurant Uses.

Staff Comments: The restaurant and special events, as proposed, will not result in removal of contracted acreage or non-contracted land because they will be located within an existing building and areas of the site currently used for essential winery functions.

Summarized Department of Conservation Comments with Staff Responses:

1) The project (restaurant and events) is not compatible with the Williamson Act because the Mitigated Negative Declaration did not address Government Code Section 51220.5 regarding temporary population increases on contracted land.

Staff Comments: The project considered and by design and through the conditions of approval will implement measures to lessen potential impacts to agricultural resources that could have otherwise resulted from the temporary population increase associated with the project.

2) These uses and facilities would be inherently related to the sites existing agricultural operation;

Staff Comments: The county's long standing agricultural policies recognize that special events, small restaurants and other agricultural accessory uses support wineries and the marketing of agricultural products.

3) The number of attendees should not abuse the Williamson Act's leniency in allowing counties to determine the permanent or temporary human population of the agricultural area.

Staff Comments: This project (and all projects proposing events and small restaurants) are carefully evaluated to ensure that the characteristics of the individual site are such that the project and temporary population increase will not displace or impede agricultural productivity or otherwise impact contracted agricultural land, thus remaining compatible with the intent of the Williamson Act.

Summarized Department of Conservation Recommendations with Staff Responses:

4) The Department of Conservation recommends the landowner serve the county with a partial notice of non-renewal and wait to proceed with the project until the term runs on the portion of the property related to the events and restaurant.

Staff Comments: The San Luis Obispo County Rules of Procedure to Implement the Land Conservation Act of 1965 do not allow portions of legal parcels to be excluded from land conservation contracts. The entire legal parcel must be either in or out of contract. The land

owner's agricultural business would be significantly curtailed if the project had to wait approximately 10 years for the contract to terminate through non-renewal.

5) The landowner may choose to submit a petition for partial cancellation in order to terminate that portion of the contract prior to its expiration via nonrenewal.

Staff Comments: The San Luis Obispo County Rules of Procedure to Implement the Land Conservation Act of 1965 do not allow portions of legal parcels to be excluded from land conservation contracts through cancellation. San Luis Obispo County very rarely relies on cancellations to address Williamson Act consistency and has not approved a cancellation in over ten years. Staff does not feel that the necessary findings could be made to support a petition for cancellation in this case.

Conclusions

The proposed uses will not displace or impair the agricultural operations on the site but will in fact directly support the marketing of the wine by introducing patrons to the agricultural operation, providing tasting and sale of the product, and offering tours of the processing facility. The temporary increase in population to the site would occur throughout the year but will be of limited number, size and duration. The capacity of the existing roadway (Cross Canyon Road) was determined by the County Department of Public Works to be at a level capable of handling traffic generated by the proposed project. Thus the temporary population increases due to "Special Events" would not impair the agricultural productivity of the site or other land under Williamson Act land conservation contract in the immediate vicinity.

We feel the proposed use with appropriate design, conditions of approval and proper management will allow the property to remain consistent with the intent of the Williamson Act by supporting and enhancing the vineyard and winery operation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Terry Wahler", written over the printed name.

Terry Wahler, Senior Planner